IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1108 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Mr. I. M. Khairdi for the appellants.

Mr. Nitin Jamdar for the respondents.

CORAM : ANOOP V. MOHTA,J.
DATED : 9th July, 2007

P.C.

1. Both the Courts after considering the material available on record, confirmed that the plaintiffs/ appellants had failed to prove that, the public urinals, in question is a nuisance to them and the action of defendants, to construct the public urinals on disputed spot, is illegal.

2. Admittedly, there was no statutory notice issued, as contemplated, under Section 487

of the Bombay Provincial Corporations Act. The requirements of statutory notice goes to the root of such suit. The action of construction or shifting the public urinals by the corporation in no way said to be illegal and or beyond the powers or their authority. The justification of shifting of such urinals is within a framework of the Corporation. It is difficult to accept the contention raised by the learned counsel appearing for the appellants that such shifting of public urinals has been causing great nuisance to their family. The construction of the public urinals as decided by the corporation based on the internal decision, just cannot be challenged by the appellant/ plaintiff on such grounds.

3. The further submission that

due to the shifting of public urinals to the newly constructed urinals dirty water is percolating in the well of plaintiff No.1, and that the well water is getting polluted and contaminated. There is no material on the record to show that, there is any such case made out. On the contrary the water proofing has been done, as contended by the learned counsel appearing for the Corporation.

4. The reasoning given by the Courts below, cannot be said to be perverse or contrary to the law.

5.Resultantly, the appeal is dismissed.

[ANOOP V. MOHTA, J.]